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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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IN RE:

CHAPTER 7

JOHN W. WELLS,

CASE No. 22-22472 (CGM)

DEBTOR

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**MEMORANDUM OF LAW IN SUPPORT OF DEBTOR'S MOTION TO
AMEND THE OCTOBER 26, 2023 ORDER PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 60(b)(1)**

PRELIMINARY STATEMENT

This memorandum is respectfully submitted in support of the debtor John W. Wells's (the "Debtor") Motion to Amend the October 26, 2023 Order entered by this Court pursuant to Federal Rule of Civil Procedure 60(b)(1).

STATEMENT OF FACTS

The facts upon which the Debtor relies are set forth in the Affirmation of even date which he incorporates by reference, as set forth herein.

ARGUMENT

**THE OCTOBER 26, 2023 ORDER SHOULD BE AMENDED
DUE TO INADVERTENCE AND MISTAKE**

It is clear based upon the application of the law to the facts in this case that the Order entered by this Court on October 26, 2023, should be amended pursuant to Federal Rule of Civil Procedure 60(b)(1) and other equitable grounds. FRCP 60(b)(1), *Facit, Inc. v. Krueger, Inc.*, 732

F. Supp. 1267, 1990 U.S. Dist. LEXIS 1950; and *In re Avery*, 272 B.R. 718 (B.Ct.E.D.Ca.2002).

Federal Rule of Civil Procedure (“FRCP”) 60(b)(1) provides, in pertinent part:

**MISTAKES; INADVERTENCE; EXCUSABLE NEGLIGENCE;
NEWLY DISCOVERED EVIDENCE; FRAUD; ETC.**

On motion and upon such terms as are just, the court may relieve a party or a party’s legal representative from a final ... order, ... for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect.... The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the ... order... was entered or taken. In order to qualify for relief under FRCP 60(b)(1) due to mistake and inadvertence, the debtor must fit within the purview of the following two (2) requirements:

- (i) an Order was entered by the Court based upon either an inadvertent mistake of fact or law; and
- (ii) the Motion must be made within a reasonable time, not to exceed the period of one (1) year.

Id.

First, the Debtor has satisfied the first of these requirements. The Order entered on October 26, 2023, was based upon an inadvertent error in that the creditor apparently submitted the incorrect version of the Stipulation to Surrender that contained the language agreed upon by the parties. It is without doubt that the remedying of such a mistake was the clear intention of FRCP 60(b)(1). FRCP 60(b)(1), *Facit, Inc. v. Krueger, Inc.*, 732 F. Supp. 1267, 1990 U.S. Dist. LEXIS 1950; and *In re Avery*, 272 B.R. 718 (B.Ct.E.D.Ca. 2002). Second, the Debtor has filed this motion within a reasonable time which has not exceeded the period of one (1) year. In determining whether such a motion is filed in a reasonable time, a court is to consider whether granting the Motion to Amend would prejudice the other party who has materially changed its position in reliance upon the original Order. *Id.* It is clear that no prejudice would result to any party in this case in reliance upon the Order.

For all of the foregoing reasons, the Debtor respectfully requests that an Order be

entered pursuant to Federal Rule of Civil Procedure 60(b)(1) Amending the Order entered by this Court on October 26, 2023, so that the Amended Order provides for the specific language agreed upon by the parties as set forth in the third decretal paragraph of the Amended Stipulation; and for such other and further relief as to the Court may seem just and proper.

Dated: White Plains, NY
October 24, 2024

Respectfully submitted,

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